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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,342	12/12/2001	Garry D. Friesen	P05453US0	8992
22885	7590	11/01/2004	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			KEENAN, JAMES W	
		ART UNIT		PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/020,342

**MAILED**

Filing Date: December 12, 2001

NOV 01 2004

Appellant(s): FRIESEN, GARRY D.

**GROUP 3600**

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Vincent Egolf  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/30/04.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement indicating that there are no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 1-9 and 27-28 stand or fall together and the rejection of claims 10, 12-15, and 17-19 stand or fall together, as appellant's brief includes a statement that these groupings of claims stand or fall together. See 37 CFR 1.192(c)(7).

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

6,092,974	Roth	7-2000
1,675,701	Fitch	7-1928
5,465,829	Kruse	11-1995
6,425,725	Ehlers	7-2002
3,868,083	Titcombe	2-1975
5,013,208	Grieshop	5-1991
5,695,399	Carlson et al	12-1997

***(10) Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 27, and 28 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 2). Note that the reference to claim 26 in that rejection now applies to the base claim 1, since the limitations of claim 26 were added to claim 1 in the after-final amendment. This is not a new ground of rejection.

Claims 1, 2, 8, 27, and 28 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 3).

Claims 10, 12, 13, and 18 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 4).

Claims 3 and 6 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 5).

Claims 4, 5, and 7 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 6).

Claims 14, 15, and 17 rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 7).

Claim 9 is rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 8).

Claim 19 is rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12/1/03 (par. 9).

**(11) Response to Argument**

Appellant argues re claim 1 that neither Roth nor Kruse would obviously be modified by Fitch such that the guide plates would incline outwardly from the perimeter edge of the bed, because the brackets of Fitch are entirely positioned within the perimeter of the bed. However, there is no requirement that the teachings of a secondary reference must be bodily incorporated into a primary reference, nor is there any reason in this situation to assume that this would be necessary. This is because it is the relative size of the containers to the bed which drives the position of the brackets. When looking at what each reference shows, it is significant that the containers of both Roth and Kruse extend to the outer perimeter edge of the bed and that the brackets holding the containers in place are positioned at (Roth) or extend beyond (Kruse) the perimeter. The container of Fitch, by contrast, is positioned a small but significant distance inside the perimeter edge. It is not the bracket *per se* of Fitch, nor its particular position on the bed, but rather the concept of utilizing an outwardly angled bracket to position and center the container on the bed, which is being used as a teaching to modify the base references. There would clearly be no reason to assume that the

brackets of Roth or Kruse would have to be moved inward such that they were positioned entirely within the perimeter edge of the bed, just because the brackets of Fitch are positioned in this manner. Doing so would actually render harm to the base references, because it would either require the bed itself to be larger or the container to be smaller, which would be completely illogical and unnecessary. Thus, utilizing Fitch's general teaching of an outwardly angled bracket on the apparatus of Roth or Kruse would result in the brackets being positioned at the perimeter edge of the bed, with the outwardly angled portions thereof clearly extending beyond the perimeter edge.

Appellant also argues re claim 10 that it would not be obvious to modify Ehlers in view of Titcombe, stating that the lock bar of Titcombe is more complex and does not extend beyond the perimeter edge in the unlocked position. Again, however, these arguments are based on the premise that the exact structure and position of the lock bars of the teaching reference must be utilized. There is no reason to assume this. Since the container of Ehlers extends to the perimeter edge of the bed, clearly any lock bar utilized could not have an unlocked position extending inwardly from the edge of the bed, because it would not be possible to move it to the locked position after a container was loaded on the bed. Similarly, there is no reason why the more complicated structure of Titcombe would necessarily be bodily incorporated into the apparatus of Ehlers. It is simply Titcombe's general teaching of a pivotal lock bar, not the exact structure and position, which is being utilized as a teaching to modify Ehlers. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,  
  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
October 25, 2004

Conferees  
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EL 

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